IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of :)
)   Confirmation No. 8892
Jeffrey L. HIRKA et al.)
)   Group Art Unit: 3628
Serial No.: 09/655,886)
)   Examiner: CHENCINSKI, Siegfried E.
Filed: September 6, 2000)
)
Docket No.: 47004.000084)

For: SYSTEM AND METHOD FOR LINKED ACCOUNT HAVING SWEEP FEATURE

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
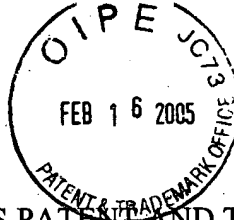Alexandria, VA 22313-1450

APPEAL BRIEF

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APPEAL BRIEF

Sir:

Appellants' Appeal Brief in connection with the above-captioned patent application

(hereinafter "the present application") is hereby submitted in triplicate. The requisite fee in

accordance with 37 C.F.R. § 41.20(b)(2) is enclosed. A petition for a two-month extension of

time under 37 C.F.R. § 1.136 is submitted herewith. It is respectfully submitted that this Appeal

Brief is timely filed in support of the Notice of Appeal filed on October 21, 2004. Each item

required by 37 C.F.R. § 41.37 is set forth below. Appellants believe that no additional fees are

deemed necessary, however if there are any deficiencies, please charge the undersigned's

Deposit Account No. 50-0206.

In response to the Office Action dated July 21, 2004, rejecting pending claims 1-51,

Appellants respectfully request that the Board of Patent Appeals and Interferences reconsider and

withdraw the rejection of record, and allow the pending claims, which are attached hereto as

Appendix A.

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I. REAL PARTY IN INTEREST

The Appellants, Jeffrey L. Hirka and Steven J. Fox, are the Applicants in the above-identified patent application. The Appellants have assigned their entire interest in the above-identified patent application to First USA Bank, NA (now part of JP Morgan Chase & Co.), having a place of business at Three Christina Center, 201 North Walnut Street, Wilmington, Delaware 19801.

II. RELATED APPEALS AND INTERFERENCES

The Appellants, the Appellant's legal representative, and the Assignee are not aware of any other appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS

Claims 1-51 are pending in the above-identified patent application. Claims 1-51 were finally rejected in an Office Action dated July 21, 2004. The final rejection of claims 1-51 is hereby appealed.

Claims 1-51 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,644,727 to Atkins (hereinafter "Atkins").

IV. STATUS OF AMENDMENTS

The above-identified patent application was filed on September 6, 2000. A first Office Action (Paper No. 5) was issued on December 29, 2003, rejecting claims 1-47. On March 9, 2004, an Amendment was filed in response to the first Office Action, in which an amendment was made to correct a grammatical error in the Abstract. On March 30, 2004, a Supplemental Amendment was filed, adding new claims 48-51. A Final Office Action (Paper No. 20040714)

was issued on July 21, 2004, rejecting claims 1-51. On September 20, 2004, a Request for Reconsideration was filed in response to the Final Office Action. An Advisory Action (Paper No. 20040928) was issued on October 6, 2004, maintaining the final rejection of claims 1-51. On October 21, 2004, a Notice of Appeal was filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, as set forth in claim 1, and as described in the specification of the above-identified patent application, is directed to a system for processing electronic transactions. The system may comprise: a first interface 136 to at least one cash account 160 against which charges incurred through use of a linked account instrument are drawn; a second interface 138 to at least one credit account 140 used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and an authorization server 130, communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, and performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument. *See* present application, pp. 6-7 and accompanying figures.

The present invention, as set forth in claim 24, and as described in the specification of the above-identified patent application, is also directed to a method for accessing funds in at least one cash account. The method may comprise the steps of: interfacing to an authorization server 130 to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account 160; and performing sweeps of said at least one cash account to determine whether charges incurred through use of

the linked account card can be satisfied by funds in said at least one cash account, or charged against at least one designated backing credit account 140. *See* present application, pp. 6-7 and accompanying figures.

The present invention, as set forth in claim 50, and as described in the specification of the above-identified patent application, is further directed to a method for accessing funds in at least one cash account 160. The method may comprise the steps of: interfacing to an authorization server 130 to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account 160; and performing at least one automatic withdrawal from said at least one cash account 160 to satisfy at least part of the charges incurred through use of the linked account instrument. *See* present application, pp. 6-7 and accompanying figures.

The present invention, as set forth in claim 51, and as described in the specification of the above-identified patent application, is additionally directed to a system for processing electronic transactions. The system may comprise: a first interface 136 to at least one cash account 160 against which charges incurred through use of a linked account instrument are drawn; a second interface 138 to at least one credit account 140 used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and an authorization server 130, communicating with the first interface 136 and the second interface 138, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, performing sweeps wherein funds are withdrawn from said at least one cash account 160 at predetermined times, and, if funds are not available from said at least one cash account, using the at least one credit account 140 until the at least one cash account contains sufficient

funds to cover the charges incurred through use of the linked account instrument. *See* present

application, pp. 6-7 and accompanying figures.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The ground of rejection is that claims 1-51 are anticipated by U.S. Patent No. 5,644,727

to Atkins under 35 U.S.C. § 102(b).

VII.   ARGUMENT

A.   Summary of Argument

The Applicants respectfully submit that the rejection of claims 1-51 under 35 U.S.C. §

102(b) is improper. Under 35 U.S.C. § 102, the U.S. Patent and Trademark Office (USPTO)

bears the burden of presenting at least a *prima facie* case of anticipation. *In re Wilder*, 57

C.C.P.A. 1314, 1318-1319, 429 F.2d 447, 450 (C.C.P.A. 1970). Anticipation requires that a

prior art reference disclose, either expressly or under the principles of inherency, each and every

element of the claimed invention. *In re King*, 801 F.2d 1324, 1326, 231 U.S.P.Q.2d 136, 138

(Fed. Cir. 1986). Applicants respectfully submit that the Examiner has not met the burden of

proof in establishing the anticipation of the appealed claims 1-51.

B.   Independent Claim 1 is Patentable over Atkins

Applicants submit that Atkins does not disclose each and every element of claim 1.

Before discussing this ground of rejection, however, a brief summary of a preferred embodiment

of Applicants' invention is provided in order to highlight some of its advantageous

characteristics.

The present invention relates to a *linked account instrument*. A linked account

instrument, as described in Applicants' specification, is typically a credit-card-like financial

instrument issued to a cardholder that, by itself, provides access to at least two accounts that are

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linked, *e.g.*, at least one cash account linked to at least one credit account. The linked account instrument, also referred to as "a linked account card," may be a magnetically encoded plastic card associated with at least one cash account *and* at least one credit account, according to a preferred embodiment of the invention. *See* present application, p. 6, lines 10-13.

The at least one credit account provides overdraft protection to the at least one cash account according to preferred embodiments of the invention. *See* present application at pp. 3-4. Charges incurred through the use of the linked account instrument are first covered by the at least one cash account. If there are insufficient funds in the at least one cash account, the charges are covered by the at least one credit account, and sweeps may then be performed on the at least one cash account in search of funds to cover the charges. *See* present application at pp. 3-5.

The linked account instrument is issued to a customer by a financial institution. To set up the linked account card account, according to an exemplary embodiment of the invention, a potential cardholder is asked to designate a demand deposit account (DDA) or other backing account that will provide the cash funds for purchases made with the linked account card. Present application at p. 8, lines 3-5. In setting up the linked account card account, the potential cardholder is also asked to provide a designated credit or other account to handle overdrafts. This may be an existing credit card or other account. Present application at p. 8, lines 10-12. After the cash account and the credit account have been identified and verified, the linked account card account can then be established. Present application at p. 8, lines 14-16. Thus, at the time the linked account instrument is issued, it is associated with a cash account linked to a credit account.

1.   **Atkins Does Not Teach or Suggest "A Linked Account Instrument"**

Atkins does not disclose or suggest a linked account instrument, as recited in claim 1. Atkins, by contrast, is directed to:

> a method and apparatus for effecting an improved personal financial analysis, planning and management system incorporating a digital system of electronic exchange, investment and borrowing with means of implementing, coordinating, supervising, planning, analyzing and reporting upon an array of asset accounts such as investments and liability accounts such as credit facilities. The apparatus comprises a wide area network of digital computation and communication instruments, including various personal digital assistants that may be linked to central processors and data storing facilities.

See Atkins, col. 7, lines 19-30 and Figure 2.

Atkins in particular teaches a financial planning tool based on a Home Owner's Management Equity (HOME)™ mortgage, the primary purpose of which is to provide an individual the opportunity to make increased investments in designated asset accounts instead of decreasing the principal of the mortgage. *See* Atkins, col. 13, lines 52-67.

Figure 2 of Atkins shows the components of the HOME Account™ system, including a central computer 22 that is connected to, among other things, a user's personal computer 24, a user's personal digital assistant 34, a user's interactive TV 50, branch terminals 26, 28 of one or more financial institutions, an account manager's personal computer 30, and an account supervisor's minicomputer 32. *See* Atkins col. 31, line 44 - col. 32, line 7. The user can communicate with the system, for example by using client personal computer 24, to inquire about the status of her account, check news or financial information, or initiate a transaction. Atkins, col. 32, lines 31-37. The Atkins system can be used with *existing* credit cards, credit card systems, POS terminals, ATM networks, and credit card and check authorization systems. Atkins, col. 10, lines 1-5.

The Final Office Action cites the following portions of Atkins as allegedly disclosing a linked account instrument:

"The client's accounts are monitored via a borrowing power baseline, and considered imbalanced if the client's borrowing power is less than the minimum borrowing power." Atkins, Abstract, lines 20-23.

"If the client account is still not balanced after modification of the account, the system will deny authorization for certain requested transactions, ..." Atkins, Abstract, lines 25-28.

"The digital system of the present invention can receive financial data, consolidate the financial information, analyze the information, recommend specific actions or transactions which optimize an individual's asset/liability allocation, capital budgeting, or portfolio selection, and negotiate with other parties (or other parties' personal digital assistants) to effect a transaction or series of transactions, and report the results to the individual." Atkins, col. 9, lines 32-39.

"The system of the present invention offers but does not require, backward compatibility with the use of existing credit cards, credit card systems, POS terminals, ATM networks, credit card and check authorization systems, among others. Thus, the present invention does not require abandonment of current systems or hardware. Further, the multiple benefits of the system may motivate financial institutions to buy appropriate personal digital assistants in large quantities to give to customers, much as they currently give away check books and passbooks today." Atkins, col. 10, lines 1-10.

"Such transactions include purchase and sale of goods and services or securities, withdrawal or deposit of cash, acquisition of annuities and insurance policies, and access to one or more types of credit facilities." Atkins, col. 29, lines 3-6.

None of these passages, nor any other portion of Atkins, discloses a linked account instrument. At best, the cited passages disclose the management of multiple accounts. However, mere management of multiple accounts, which is well known in the art, does not in any way disclose or suggest a linked account instrument. Atkins does not teach or suggest any linked account instrument, as recited in Applicants' claim 1.

The Examiner specifically points to column 9, lines 32-39 of Atkins (cited above) as proof that "Atkins' system automatically carries out linked transactions according to the user's predetermined preference." Final Office Action, page 8, lines 1-2. However, Applicants

respectfully submit that an ability to carry out linked transactions (assuming for the sake of argument that Atkins discloses linked transactions) does not in any way disclose or suggest the existence of "a linked account instrument" as claimed in Applicants' claim 1.

Atkins, by contrast, discloses a system including a central computer that is connected to a user's personal computer and branch terminals of one or more financial institutions. *See* Atkins col. 31, line 44 - col. 32, line 7 and Figure 2. The user can communicate with the system to initiate a transaction. Atkins, col. 32, lines 31-37. The Atkins system, however, uses *existing* credit cards, credit card systems, POS terminals, ATM networks, and credit card and check authorization systems. *See* Atkins, col. 10, lines 1-5 (Atkins "offers but does not require, backward compatibility with the use of existing credit cards, credit card systems, POS terminals, ..."). These existing systems are not linked account instruments. Rather they are conventional credit cards, credit card systems, POS terminals, ATM networks, and credit card and check authorization systems. Therefore, Atkins cannot anticipate claim 1, which recites a "linked account instrument."

2. **Atkins Does Not Teach or Suggest "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account"**

Claim 1 recites "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account." Atkins does mention "credit facilities." *See* Atkins at col. 7, lines 20-26. However, the credit facilities in Atkins are merely one example of liability accounts to be balanced with asset accounts in Atkins' personal financial management system. There is no teaching or suggestion in Atkins that credit accounts could be used to back up cash accounts in an overdraft scenario. In fact, Atkins teaches away from this claimed feature, because in Atkins, *the amount available for borrowing must be less than the value of the asset accounts used for collateral.* *See* Atkins at col. 11, lines

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31-35 ("The home owner's total assets, as adjusted to provide the financial institution with a measure of security for its lending, *must always be greater than some imposed minimum standard or minimum borrowing power.*") (emphasis added); Atkins at col. 16, lines 38-44 ("Other dynamic aspects of the HOME Account™ system maintain a constant loan to value ratio [mortgage amount/home value amount] as the value of the home increases over time. By advancing additional loans such as home equity loans secured by the home and one or more asset accounts, *the loan to value ratio is always maintained at a constant percentage.* In a preferred embodiment, such percentage is 80%") (emphasis added). These teachings in Atkins teach away from Applicants' claim 1 combination, which recites "at least one credit account used to back said at least one cash account *in the event of insufficient funds in said at least one cash account.*" Accordingly, Atkins cannot anticipate claim 1.

3.   **Atkins Does Not Teach or Suggest "performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument"**

Claim 1 recites "performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument." The "sweep" or "automatic withdrawal" function disclosed in the present application involves automatic reconciliation between a cash account and a backing credit account. According to exemplary embodiments of the present invention, a "sweep" of a cash account typically involves an automated clearing house (ACH) type or similar request that is initiated by a financial institution. For example, "[a]t a predetermined time, such as at, near or just after the end of each day, the cardholder's designated cash account may be swept via an automated clearing house to determine whether adequate funds exist to cover all of the day's charges accumulated through use of the linked

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account card." Present application, p. 10, lines 23-26. "If adequate funds are present in the cardholder's designated cash account 160 at the time of reconciliation, the funds may be withdrawn from the cash account 160 in step 418 and the authorization server 130 may reset the daily spending limit to its full amount in step 422 for the following day." Present application, p. 11, lines 1-4.

If the cash account does not have sufficient funds, the overdraft amount may be satisfied by the linked credit account. "After the placing of the overdraft on the credit account, a check or sweep may be automatically made against the cash account at 12:01 a.m. the next day or other later time to check for sufficient funds to cover the extended overdraft credit." Present application, page 4, lines 3-6. "If adequate funds become available during one of the subsequent sweeps, they may be withdrawn from the cash account and the credit account may be cleared at the earliest possible opportunity. This provides advantages over a traditional debit card account, where a cardholder may have to pay off the overdraft by visiting the bank or mailing a check to the bank." Present application, page 4, lines 24-29.

The Final Office Action cites the following portion of Atkins as allegedly disclosing "sweeps":

> "The suggested prioritization function may recommend various forms of "sweeping" or allocating funds from or to one or more asset or liability accounts." Atkins, col. 7, lines 42-45.

In addition to the cited passage, the word "sweep" also appears in the follow portions of Atkins:

> "If desired, the system automatically manages a client's budgetary and financial affairs through a system of expert *sweeps* based on a client's preferences." Atkins, Abstract.

> "Such expert can provide her with an integrated financial plan that is frequently updated together with financial management tools such as

expert account *sweep* features that automatically allocate funds in accordance with the plan." Atkins, col. 8, lines 40-44.

"This subsystem incorporates automatic or expert *sweep* features between asset and liability accounts that provide a means of implementing, coordinating, supervising, planning, analyzing, and reporting on investments in an array of assets and liabilities from a variety of credit facilities." Atkins, col. 13, lines 25-30.

"By executing PALAP, the system generates a preferred allocation of assets and liabilities based on system default variables and client input comprising variables specified by the individual which may be implemented through the HOME Account™ or MyNet™ systems of automated allocations or account *sweeps*." Atkins, col. 49, lines 52-58.

"The outputs can be used to establish a system of expert *sweeps* or fund transfers that will either automatically or upon client approval *sweeps* funds from a HOME Account™ sub-account in order to implement the PALAO, PIBO and the individual's personal budget." Atkins, col. 51, lines 50-54.

However, none of the cited portions, nor any other portion of Atkins, discloses or suggests "performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument." Rather, in Atkins, as discussed above, a borrowing limit prevents the extension of credit beyond the value of the asset account. *See, e.g.,* Atkins at col. 11, lines 31-35. Therefore, there is no need in Atkins to "determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument," as recited in claim 1, because Atkins does not extend the loan in such a case. Accordingly, Atkins cannot anticipate Applicants' claim 1, because it does not disclose or suggest this claimed feature.

C. Independent Claim 24 is Patentable over Atkins

Claim 24 is a method claim that recites, among other things, "interfacing to an authorization server to authorize individual transactions initiated through use of a linked account

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instrument." As discussed above with respect to claim 1, Atkins does not disclose or suggest a linked account instrument. Rather, Atkins discloses a system that interfaces with conventional credit card systems and ATM systems, for example, which do not comprise linked account instruments. *See, e.g.,* Atkins at col. 10, lines 1-5 and col. 62, lines 59-62. Accordingly, Atkins cannot anticipate claim 24.

Claim 24 also recites "performing sweeps of said at least one cash account to determine whether charges incurred through use of the linked account card can be satisfied by funds in said at least one cash account." Atkins does not disclose or suggest this claimed feature. For example, Atkins does not disclose or suggest determining whether charges incurred through use of a linked account card can be satisfied by funds in at least one cash account. Rather, in Atkins, there is no need to make such a determination, since the loan amount in Atkins is kept below a certain percentage, e.g., 80%, of the home value amount. *See* Atkins at col. 16, lines 37-44.

Claim 24 also recites a designated backing credit account. In Atkins, there is no "backing" credit account that is charged if the funds in the cash account are insufficient for a particular transaction. Rather, the loan amount is kept below a certain percentage of the home value amount. *See, e.g.,* Atkins at col. 11, lines 31-35.

For all of the foregoing reasons, Atkins cannot anticipate claim 24.

D.   Independent Claim 50 is Patentable over Atkins

Claim 50 recites a method for accessing funds in at least one cash account. Claim 50 recites, among other things, "interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument." As discussed above with respect to claim 1, Atkins does not disclose or suggest a linked account instrument. Therefore Atkins cannot anticipate claim 50.

Claim 50 also recites "performing at least one automatic withdrawal from said at least one cash account to satisfy at least part of the charges incurred through use of the linked account instrument." Atkins does not disclose or suggest this claimed feature, because Atkins does not disclose or suggest a linked account instrument. Although Atkins discloses automatic mortgage payment collection, *see, e.g.*, Atkins, col. 42, lines 37-40, and automatic reallocation of assets and liabilities, *see, e.g.*, Atkins, col. 48, lines 40-43, Atkins does not disclose automatic withdrawal from a cash account to satisfy charges incurred through use of a linked account instrument. Further, the automatic withdrawal as contemplated in the present application may be performed quite frequently, which is particularly discouraged by Atkins. In Atkins' system,

> "[t]pically, the designated asset accounts are accounts that are not subject to frequent withdrawal of funds. Thus, these asset accounts may accrue substantial interest and dividend revenue over the term of the mortgage loan and may appreciate in capital value." Atkins, col. 13, lines 55-59.

Therefore, Atkins does not disclose the feature of automatic withdrawal as recited in claim 50. Accordingly, Atkins cannot anticipate claim 50.

E.   **Independent Claim 51 is Patentable over Atkins**

Claim 51 recites "a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn." As discussed above with respect to claim 1, Atkins does not disclose or suggest a linked account instrument. Therefore, Atkins cannot anticipate claim 51.

Claim 51 also recites "a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument." Atkins does not disclose or suggest this claimed feature. In Atkins, there is no credit account used to back said at least one cash account in the event of insufficient funds. Rather, the loan amount in Atkins is

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kept below a certain percentage of the home value amount so that no backing is required. Therefore, Atkins cannot anticipate claim 51.

Claim 51 also recites that "if funds are not available from said at least one cash account, using the at least one credit account until the at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument." This feature is not disclosed or suggested in Atkins. In particular, in Atkins, the amount available for borrowing must be less than the value of the asset accounts used for collateral. *See* Atkins at col. 11, lines 31-35 ("The home owner's total assets, as adjusted to provide the financial institution with a measure of security for its lending, must always be greater than some imposed minimum standard or minimum borrowing power."). This teaching in Atkins teaches away from Applicants' claim 51 combination, which recites that "if funds are *not available* from said at least one cash account, using the at least one credit account *until the at least one cash account contains sufficient funds* to cover the charges incurred through use of the linked account instrument." Accordingly, Atkins cannot anticipate claim 51.

F.   Dependent Claims 2-23 and 25-49 Are Each Separately Patentable Over Atkins

Claims 2-23 and 25-49 all depend ultimately from one of independent claims 1 and 24. As such, each of these dependent claims contain each of the elements recited in the independent claims. For the reasons stated above, Atkins fails to disclose or suggest all the elements recited in claims 1 and 24. Thus, for at least the same reasons, Atkins cannot anticipate claims 2-23 or 25-49. Additionally, claims 2-23 and 25-49 are each separately patentable over Atkins for the additional features that each of these dependent claims recites.

1.   Claims 2-3 and 25-26

For example, claims 2-3 and 25-26 are each separately patentable because Atkins fails to disclose a "demand deposit account" as being backed by at least one credit account. In addition, there is no teaching or motivation to modify Atkins to include the feature of at least one demand deposit account. Despite the Office Action's allegation of a cash account being inherent, the operation of Atkins' HOME™ mortgage-based financial planning tool does not require inclusion of a cash account much less a demand deposit account.

2.   Claims 9-16 and 32-39

Claims 9 and 32 are each separately patentable because Atkins fails to disclose the generation of "individual automated clearing house debits" "for each transaction initiated with the linked account instrument." Atkins makes no reference to an automated clearing house debit. In fact, even if automated clearing house debits were contemplated, Atkins would refrain from generating *individual* automated clearing house debits for *each* transaction because Atkins disfavors frequent withdrawal from the asset accounts in its system. *See, e.g.,* Atkins, col. 13, lines 55-59. Therefore, Atkins cannot anticipate claims 9 or 32. Since claims 10-16 and 33-39 all depend from either claim 9 or claim 32, they are all patentable over Atkins for at least the same reasons. Further, since Atkins does not disclose or suggest any of the specific rules recited in claims 10-16 or 33-39 for processing the automated clearing house debits against the at least one cash account and the at least one credit account, each of these claims is separately patentable over Atkins.

3.   Claims 17-23 and 40-47

Claims 17 and 40 are each separately patentable because Atkins fails to disclose a "daily limit" on a cash account against which individual transactions may be authorized. Atkins does

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not impose a daily limit on its user's spending or borrowing activities. Rather, Atkins provides a measure of security by imposing a loan to value ratio which is not a daily limit at all. *See, e.g.,* Atkins at col. 11, lines 31-35; col. 16, lines 38-44. Therefore, Atkins cannot anticipate claims 17 or 40. Since claims 18-23 and 41-47 all depend from either claim 17 or claim 40, they are all patentable over Atkins for at least the same reasons. In addition, since Atkins does not disclose or suggest any of the additional limitations recited in claims 18-23 or 41-47, these claims are each separately patentable over Atkins.

VIII.   CLAIMS APPENDIX

Appendix A contains a listing of currently pending claims.

IX.   EVIDENCE APPENDIX

No Evidence Appendix is included herewith.

X.   RELATED PROCEEDINGS APPENDIX

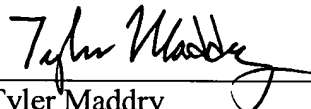No Related Proceedings Appendix is included herewith.

XI. CONCLUSION

For the foregoing reasons, Applicants respectfully submit that Atkins fails to anticipate Applicants claims 1-51 under 35 U.S.C. § 102(b). Accordingly, Applicants respectfully request reversal of the final rejection of claims 1-51.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

HUNTON & WILLIAMS, LLP

By: _____
Tyler Maddry
Reg. No. 40,074

HUNTON & WILLIAMS, LLP
1900 K Street, N.W., Suite 1200
Washington, D.C. 20006-1109
Telephone (202) 955-1500
Facsimile (202) 778-2201

Dated: FEB. 16, 2005

APPENDIX A

1.   (Original) A system for processing electronic transactions, comprising:

     a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn;

     a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and

     an authorization server, communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, and performing sweeps of said at least one cash account at predetermined times to determine whether said at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument.

2.   (Original) The system of claim 1, wherein said at least one cash account comprises at least one demand deposit account.

3.   (Original) The system of claim 1, wherein said at least one demand deposit account comprises a plurality of demand deposit accounts.

4.   (Original) The system of claim 1, wherein said at least one cash account may be held at any financial institution.

5.   (Original) The system of claim 1, wherein said at least one credit account comprises a plurality of credit accounts.

6.   (Original) The system of claim 1, wherein said at least one credit account may be held at any financial institution.

7.   (Original) The system of claim 6, wherein said at least one credit account has an associated credit line at least equal to the predetermined cumulative limit.

8.   (Original) The system of claim 1, wherein the authorization server comprises at least one of an account information database, an account balance database, and a transaction history database.

9.   (Original) The system of claim 1, wherein individual automated clearing house debits are generated for each transaction initiated with the linked account instrument.

10.   (Original) The system of claim 9, wherein the automated clearing house debits are first processed against said at least one cash account via an automated clearing house.

11.   (Original) The system of claim 10, wherein the automated clearing house debits are processed against said at least one cash account in the order in which they were generated.

12.   (Original) The system of claim 10, wherein each automated clearing house debit is processed against said at least one cash account based on the relative size of its amount.

13.   (Original) The system of claim 12, wherein the smallest debit amounts are processed against said at least one cash account first, leaving larger debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

14.   (Original) The system of claim 12, wherein the largest debit amounts are processed against said at least one cash account first, leaving smaller debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

15.   (Original) The system of claim 10, wherein an entire debit amount is processed against said at least one credit account in the event that there are funds in said at least one cash account that can only cover a percentage of the debit amount.

16.   (Original) The system of claim 10, wherein a first percentage of the debit amount is processed against said at least one cash account, and a second percentage of the debit amount is processed against said at least one credit account in the event that there are funds in said at least one cash account that cannot satisfy the entire debit amount.

17.   (Original) The system of claim 1, wherein the predetermined cumulative limit is a daily limit, and the authorization server is configured to decline to authorize additional transactions attempted with the linked account instrument once the daily limit has been reached.

18.   (Original) The system of claim 17, wherein the authorization server is configured to cease authorizing transactions attempted with the linked account instrument if a first sweep of said at

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least one cash account finds insufficient funds to satisfy previous charges incurred through use of the linked account instrument.

19. (Original) The system of claim 18, wherein said at least one credit account used to back said at least one cash account will be cleared if a subsequent sweep of said at least one cash account finds adequate funds to satisfy those funds covered by said at least one credit account.

20. (Original) The system of claim 19, wherein the authorization server is configured to refresh the pre-determined cumulative limit and authorize transactions after said at least one credit account has been cleared.

21. (Original) The system of claim 20, wherein a user of the linked account instrument is charged a fee for use of said at least one credit account.

22. (Original) The system of claim 18, wherein the authorization server is configured to continue to cease authorizing transactions attempted with the linked account instrument if a predetermined number of subsequent sweeps of said at least one cash account fail to find sufficient funds to satisfy the charges incurred through use of the linked account instrument.

23. (Original) The system of claim 17, wherein the authorization server is configured to continue to authorize linked account card transactions up to the predetermined cumulative limit against available credit on the credit account, even if a first sweep of the cash account finds insufficient funds to satisfy previous charges.

24. (Original) A method for accessing funds in at least one cash account, comprising the steps of:

        a) interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account; and

        b) performing sweeps of said at least one cash account to determine whether charges incurred through use of the linked account card can be satisfied by funds in said at least one cash account, or charged against at least one designated backing credit account.

25. (Original) The method of claim 24, wherein said at least one cash account comprises at least one demand deposit account.

26. (Original) The method of claim 24, wherein said at least one demand deposit account comprises a plurality of demand deposit accounts.

27. (Original) The method of claim 24, wherein step (a) further comprises the step of:
c) holding said at least one cash account at any financial institution.

28. (Original) The method of claim 24, wherein said at least one credit account comprises a plurality of credit accounts.

29. (Original) The method of claim 24, wherein step (b) further comprises the step of:
d) holding said at least one credit account at any financial institution.

30. (Original) The method of claim 24, wherein step (b) further comprises the step of:
e) providing an associated credit line for said at least one credit account that is at least equal to the predetermined cumulative limit.

31. (Original) The method of claim 24, wherein the authorization server comprises at least one of an account information database, an account balance database, and a transaction history database.

32. (Original) The method of claim 24, wherein step (a) further comprises the step of:
f) generating individual automated clearing house debits for each transaction initiated with the linked account instrument, and authorized by the authorization server.

33. (Original) The method of claim 32, wherein step (f) further comprises the step of:
g) processing the automated clearing house debits against said at least one cash account via an automated clearing house.

34. (Original) The method of claim 33, wherein step (g) further comprises the step of:
h) processing the automated clearing debits against said at least one cash account in the order in which they were generated.

35.   (Original) The method of claim 33, wherein step (g) further comprises the step of:

i) processing each automated clearing house debit against said at least one cash account based on the relative size of its amount.

36.   (Original) The method of claim 35, wherein step (i) further comprises the step of:

j) processing the smallest debit amounts against said at least one cash account first, leaving larger debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

37.   (Original) The method of claim 35, wherein step (i) further comprises the step of:

k) processing the largest debit amounts against said at least one cash account first, leaving smaller debits that cannot be satisfied by said at least one cash account to be processed against said at least one credit account.

38.   (Original) The method of claim 33, wherein step (g) further comprises the step of:

l) processing an entire debit amount against said at least one credit account in the event that there are funds in said at least one cash account that can only cover a percentage of the debit amount.

39.   (Original) The method of claim 33, wherein step (g) further comprises the step of:

m) processing a first percentage of the debit amount against said at least one cash account and a second percentage of the debit amount is processed against said at least one credit account in the event that there are funds in said at least one cash account that cannot satisfy the entire debit amount.

40.   (Original) The method of claim 24, wherein the predetermined cumulative limit is a daily limit.

41.   (Original) The method of claim 40, wherein step (a) further comprises the step of:

n) ceasing to authorize additional transactions attempted with the linked account instrument once the predetermined cumulative limit has been reached.

42.   (Original) The method of claim 41, further comprising the step of:

o) ceasing to authorize transactions attempted with the linked account instrument if a first sweep of said at least one cash account finds insufficient funds to satisfy previous charges incurred through use of the linked account instrument.

43. (Original) The method of claim 42 , further comprising the step of:

p) clearing said at least one credit account if a subsequent sweep of said at least one cash account finds adequate funds to satisfy those funds temporarily covered by said at least one credit account.

44. (Original) The method of claim 43, further comprising the steps of:

q) refreshing the predetermined cumulative limit; and

r) authorizing transactions after said at least one credit account has been cleared.

45. (Original) The method of claim 44, further comprising the step of:

s) charging a user of the linked account instrument a fee for use of said at least one credit account.

46. (Original) The method of claim 42, further comprising the step of:

t) continuing to cease authorization of transactions attempted with the linked account instrument if a predetermined number of subsequent sweeps of said at least one cash account fail to find sufficient funds to satisfy the charges incurred through use of the linked account instrument.

47. (Original) The method of claim 41, further comprising the step of:

u) continuing to authorize linked account instrument transactions up to the predetermined cumulative limit against available credit on said at least one credit account, even if a first sweep of said at least one cash account finds insufficient funds to satisfy previous charges.

48. (Previously Added) The system of claim 1, wherein said authorization server is further configured to automatically withdraw funds from said at least one cash account to cover at least part of the charges incurred through use of the linked account instrument.

49. (Previously Added) The method of claim 24, further comprising automatically withdrawing at least part of the funds in said at least one cash account to satisfy at least part of the charges incurred through use of the linked account card.

50. (Previously Added) A method for accessing funds in at least one cash account, comprising the steps of:

    a) interfacing to an authorization server to authorize individual transactions initiated through use of a linked account instrument against a predetermined cumulative limit on said at least one cash account; and

    b) performing at least one automatic withdrawal from said at least one cash account to satisfy at least part of the charges incurred through use of the linked account instrument.

51. (Previously Added) A system for processing electronic transactions, comprising:

a first interface to at least one cash account against which charges incurred through use of a linked account instrument are drawn;

a second interface to at least one credit account used to back said at least one cash account in the event of insufficient funds in said at least one cash account to cover the charges incurred through the use of the linked account instrument; and

an authorization server, communicating with the first interface and the second interface, the authorization server authorizing individual transactions against a pre-determined cumulative limit on said at least one cash account, performing sweeps wherein funds are withdrawn from said at least one cash account at predetermined times, and, if funds are not available from said at least one cash account, using the at least one credit account until the at least one cash account contains sufficient funds to cover the charges incurred through use of the linked account instrument.